

AMENDED IN ASSEMBLY MAY 30, 2012

AMENDED IN SENATE JANUARY 9, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 625

Introduced by Senator Hernandez

February 18, 2011

An act to amend Sections 6701, 6722, 6727, 6728, 6761, 6901, 6902, 6903, 6904, 6921, 6922, 6923, 6925, 6961, and 6968 of, *and to add Section 6900 to*, the Food and Agricultural Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as amended, Hernandez. Nursery stock.

Existing law specifies the duties of the Secretary of Food and Agriculture and county agricultural commissioners with respect to the sale and control of nursery stock, as defined. Existing law requires a person to hold a valid license in order to sell nursery stock and makes a violation of these provisions a crime. Under existing law, the secretary is prohibited from refunding more than $\frac{1}{2}$ of the minimum license fee to any person who applies for a license to sell nursery stock and who later decides not to do so.

This bill would prohibit the secretary from returning more than 25% of the minimum license fee.

Existing law requires the secretary, by regulation, to provide for periodic inspections of nurseries and authorizes the secretary to prescribe standards of cleanliness for nursery stock. Existing law sets forth suggestions for the standards of cleanliness.

~~This bill would instead require the secretary to prescribe standards of cleanliness for nursery stock and~~ would make specified standards of

cleanliness, including, but not limited to, being free of pests and isolation of infested or infected plants, mandatory. *The bill would also authorize the secretary to, by regulation, develop and implement an audit-based certification system for certification of nursery stock shipments.*

Under existing law, it is unlawful to move nursery stock without a valid nursery certificate unless the person has forwarded to the county agricultural commissioner, at or prior to the time of shipment, a manifest stating prescribed information. Under existing law, it is also unlawful to ship, or cause to be shipped, nursery stock from one county to another without a nursery stock certificate or shipping permit. Existing law authorizes the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate or shipping permit if the person fails to comply with the statutory provisions applicable to nursery stock.

This bill would require the person to forward the manifest to the county agricultural commissioner prior to shipment. ~~The bill would require the county agricultural commissioner to revoke or suspend the right to use a nursery stock certificate if the person fails to comply with the statutory provisions applicable to nursery stock.~~ The bill would also make technical, nonsubstantive changes to the nursery stock provisions. By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6701 of the Food and Agricultural Code
- 2 is amended to read:
- 3 6701. The secretary may publish in pamphlet form, as often
- 4 as he or she deems necessary, a list of all persons that are licensed
- 5 pursuant to this chapter. The pamphlet may also contain such
- 6 additional information as the secretary deems advisable concerning
- 7 the enforcement of laws and regulations which pertain to nursery
- 8 stock.

1 SEC. 2. Section 6722 of the Food and Agricultural Code is
2 amended to read:

3 6722. Except as provided in Section 6761, the secretary, upon
4 receipt of the total license fee which is established pursuant to
5 Section 6723, shall issue a license to sell nursery stock for the
6 appropriate period as established pursuant to Section 6724 to any
7 person that sells or seeks to sell plants, as defined in Section 5007,
8 for planting, propagation, or ornamentation. Plants for
9 ornamentation shall include cut flowers and cut greens. The
10 applicant shall further satisfy the secretary of his or her character
11 and good faith in seeking to carry on the business of selling nursery
12 stock.

13 SEC. 3. Section 6727 of the Food and Agricultural Code is
14 amended to read:

15 6727. No restoration fee is required of a person whose
16 application for renewal of a license is accompanied by his or her
17 signed statement that the licensee did not sell nursery stock during
18 the time the license was lapsed and for which the licensee is
19 applying for renewal. The secretary also may accept, at his or her
20 discretion, the licensee's affidavit that the minimum license fee
21 was not paid within the time limits specified in Section 6724 for
22 reasons beyond the licensee's control.

23 SEC. 4. Section 6728 of the Food and Agricultural Code is
24 amended to read:

25 6728. The secretary shall not refund more than 25 percent of
26 the minimum license fee to any person who applies for a license
27 to sell nursery stock and who later decides not to engage in the
28 sale of nursery stock. No portion of the minimum license fee shall
29 be refunded to any person who is denied a license pursuant to
30 Section 6761.

31 SEC. 5. Section 6761 of the Food and Agricultural Code is
32 amended to read:

33 6761. The secretary, after investigation and hearing, may refuse
34 to issue or renew a license, or may suspend or revoke a license, if
35 he or she determines that the licensee or the applicant has done
36 any of the following:

37 (a) Willfully refused to comply with the laws and regulations
38 relative to nursery stock or to any pest which might be carried by
39 nursery stock.

(b) Intentionally committed fraud or deception in the procurement of the license.

(c) Been found guilty of fraud or misrepresentation in the handling or sale of nursery stock.

(d) Failed to maintain nursery stock produced or sold by him or her in accordance with the standards of cleanliness that are prescribed by the secretary.

(e) Failed to comply with any lawful order that is issued by the secretary or commissioner.

SEC. 6. Section 6900 is added to the Food and Agricultural Code, to read:

6900. (a) The secretary may, by regulation, develop and implement an audit-based certification system for nursery stock shipments.

(b) The audit-based certification system shall do both of the following:

(1) Address the control and management of plant pests in nursery production processes.

(2) Mitigate the risk of movement of plant pests in nursery shipments.

(c) The audit-based certification system shall be based in risk assessment and risk management utilizing current scientific and industry data and shall include best management practices, including, but not limited to, enhanced inventory and tracking systems, staff training, risk identification, risk mitigation, pest management, and recordkeeping and reporting.

~~SEC. 6.~~

SEC. 7. Section 6901 of the Food and Agricultural Code is amended to read:

6901. The secretary by regulation shall provide for periodic inspections of nurseries and shall may prescribe standards of cleanliness for nursery stock that is produced or sold within the state.

~~SEC. 7.~~

SEC. 8. Section 6902 of the Food and Agricultural Code is amended to read:

6902. The standards of cleanliness shall do, but not be limited to, the following:

(a) Provide that all nursery stock shall be kept free from pests of limited distribution or pests that are not known to be established

1 in this state and commercially clean in respect to established pests
2 of general distribution.

3 (b) Prescribe methods of treatment of various types of nursery
4 stock for control of pests.

5 (c) Require isolation of infested or infected nursery stock
6 pending treatment or other disposal.

7 (d) Make other provisions as are reasonably necessary to ensure
8 the relative freedom from pests of all nursery stock that is produced
9 or sold within the state.

10 ~~SEC. 8.~~

11 *SEC. 9.* Section 6903 of the Food and Agricultural Code is
12 amended to read:

13 6903. The commissioner shall inspect all nurseries within his
14 or her jurisdiction when and as required by the regulations of the
15 secretary.

16 ~~SEC. 9.~~

17 *SEC. 10.* Section 6904 of the Food and Agricultural Code is
18 amended to read:

19 6904. The commissioner shall issue orders as may reasonably
20 be necessary to ensure compliance with the standards of
21 cleanliness.

22 Any interested person, upon request, is entitled to a hearing
23 before the secretary to review any order issued by a commissioner
24 pursuant to this section.

25 ~~SEC. 10.~~

26 *SEC. 11.* Section 6921 of the Food and Agricultural Code is
27 amended to read:

28 6921. It is unlawful for any person to ship, or cause to be
29 shipped, any nursery stock from one county or locality of the state
30 to another county or locality within the state unless he or she has
31 marked upon the nursery stock, in a conspicuous manner and place,
32 both of the following:

33 (a) The name and address of the shipper, owner, or person that
34 is forwarding the nursery stock.

35 (b) The name of the person, or his or her agent, to whom the
36 nursery stock is forwarded.

37 ~~SEC. 11.~~

38 *SEC. 12.* Section 6922 of the Food and Agricultural Code is
39 amended to read:

6922. Except as otherwise provided in Sections 6502, 6504, 6505, 6506, and 6924, it is unlawful for a person to sell, deliver, or transport nursery stock from one county to another county within the state unless he or she has affixed to the nursery stock in a conspicuous place one of the following, which is issued by the commissioner of the county of origin:

(a) A shipping permit that warns that inspection at destination is required.

(b) A valid nursery stock certificate.

~~SEC. 12.~~

SEC. 13. Section 6923 of the Food and Agricultural Code is amended to read:

6923. Except as otherwise provided in Section 6502 or 6506, it is unlawful for a person to sell, deliver, or transport from one locality to another locality within the same county nursery stock that the commissioner considers and designates to be liable to be infested with any pest, unless he or she has affixed to the nursery stock in a conspicuous place one of the following:

(a) A shipping permit that warns that inspection at destination is required.

(b) A valid nursery stock certificate issued by the commissioner of the county, which gives notice that inspection at destination is not required.

~~SEC. 13.~~

SEC. 14. Section 6925 of the Food and Agricultural Code is amended to read:

6925. It is unlawful for a person to move nursery stock from one locality to another locality within the same county under conditions provided in Section 6926, or from one county to another county within the state, except nursery stock that is accompanied by a valid nursery stock certificate, unless the person forwards, prior to the time of shipment, to the commissioner who has jurisdiction at the destination, a manifest stating all of the following:

(a) Name and address of the shipper.

(b) Name and address of the person to whom the shipment is being forwarded.

(c) Name and quantity of each kind of plant contained in the shipment.

1 (d) Name of the locality where each kind of nursery stock was
2 grown.

3 (e) Name of the carrier by which the shipment is being
4 transported, whether by freight, express, mail, truck, boat, airplane,
5 or otherwise.

6 The requirement for a manifest does not apply to the shipment
7 of seeds.

8 ~~SEC. 14.~~

9 *SEC. 15.* Section 6961 of the Food and Agricultural Code is
10 amended to read:

11 6961. The secretary may issue regulations that will govern the
12 issuance and form of nursery stock certificates and shipping permits
13 and their use on shipments of nursery stock, to ensure the relative
14 freedom from pests of all nursery stock that is produced or sold
15 within the state, and which will evidence compliance with the
16 following:

17 (a) The inspections and standards of cleanliness in Article 1
18 (commencing with Section 6901).

19 (b) The nursery stock grades and standards in Chapter 5
20 (commencing with Section 53301) of Division 18.

21 (c) Any other law, or lawful order that is issued by the secretary
22 or the commissioner, relating to the production or sale of nursery
23 stock within the state, or any shipment thereof except where a
24 specific certificate or permit is required by a quarantine regulation
25 that is issued pursuant to Section 5301, 5302, or 5322.

26 ~~SEC. 15.~~

27 *SEC. 16.* Section 6968 of the Food and Agricultural Code is
28 amended to read:

29 6968. The commissioner ~~shall~~ *may* revoke or suspend the right
30 to use a nursery stock certificate or shipping permit that is issued
31 to a person that fails to comply with the provisions of this chapter,
32 Chapter 5 (commencing with Section 53301) of Division 18, or
33 any regulation issued pursuant thereto.

34 ~~SEC. 16.~~

35 *SEC. 17.* No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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